IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WP(C).No. 31069 of 2004(W)

PETITIONERS:
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1. **P.K.UNNIPPERAVAN, S/O.RAMAN, PUNNATH KALLIPPURATH HOUSE, 145/5. PONNAMPADAM, KARADPARAMBA P.O. VIA, FAROOQ COLLEGE, MALAPPURAM DISTRICT 673 632.**

2. **K.T.AHAMMED, S/O.AKAMMUKUTTY, KODALIKUZHI THADIYAM KULATH, PUTHUR PALLICKAL P.O. THENHIPPALAM, MALAPPURAM DISTRICT 673 636.**

3. **P.HAMZA, PARASSERY KUZHI HOUSE, FAROOQ COLLEGE P.O. KOZHIKODE.**

4. **K.ALAVIKUTTY, KOYAPAKALATHINMELIL HOUSE, THENHIPALAM P.O. MALAPPURAM.**

5. **P.K.KUNHUNNIKKURUPPU, NADUVIN MUTTAN HOUSE, PUZHAMUDI P.O. VAYANAD DISTRICT.**

6. **K.V.MURALIKRISHNAN, MURALI NILAYAM, PERUMUGHAM P.O. FEROKE VIA, KOZHIKODE DIST.**

BY ADV. SRI.C.P.MOHAMMED NIAS
SRI.E.NARAYANAN

RESPONDENTS:
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1. **THE STATE OF KERALA,R EP. BY ITS SECRETARY, THIRUVANANTHAPURAM.**

2. **THE DEPUTY TAHSILDAR, ARREAR COLLECTION, TALUK OFFICE, THIRURANGADI.**

***3. M/S. MALANAD TILES AND CLAY PRODUCTS,
145/5, PUNNATH PALIPURATH HOUSE,
PONNAMPADAM, MARAD PARAMBA P.O.**

**4. THE KERALA FNANCE CORPORATION,
REP. BY ITS DIST. MANAGER, KALPETTA.**

***ADDL. R3 AND R4 ARE IMPLEADED AS PER ORDER DATED 16/02/2005 IN IA NO. 1960/2005.**

****5. SALES TAX OFFICER, VYTHIRI,
KALPETTA.**

***ADDL. R3 IS IMPLEADED AS PER ORDER DATED 07/03/2005.**

**BY GOVERNMENT PLEADER SRI. V.TEKCHAND
ADV. SRI V B UNNIRAJ FOR R4**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 31069/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE DEMAND NOTICE DT. 16/6/98.

EXT.P2. COPY OF THE FINAL ANNUAL ASSESSMENT DEMAND FOR RS. 900/- DATED 16/10/98.

EXT.P3. COPY OF THE NOTICES DT. 8/1/2004.

EXT.P4. COPY OF THE FINAL ANNUAL ASSESSMENT DEMAND FOR RS. 1506/0 DT. 8/1/2004.

EXT.P5. COPY OF THE NOTICE DT. 8/1/2004.

EXT.P6. COPY OF THE FINAL ANNUAL ASSESSMENT DEMAND FOR RS. 400/-

EXT.P7. COPY OF THE NOTICE DT. 12/07/2004.

EXT.P8. COPY OF THE NOTICES DTD. 14/7/2004.

EXT.P9. COPY OF THE DOCUMENT NO. 1380/91 DT. 24/12/91.

RESPONDENT'S EXHIBITS

EXT.R5A. COPY OF THE DEPOSITION TENDERED BY THE MANAGING DIRECTOR.

EXT.R5B. COPY OF THE ASSESSMENT ORDER FOR 1998-99.

EXT.R5C. COPY OF THE ASSESSMENT ORDER FOR 1999-2000.

True copy

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THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.31069 OF 2004

Dated this the 1st day of November, 2007

JUDGMENT

The petitioners are shareholders, including directors, of a company by name M/s.Malanad Tiles and Clay Products Pvt. Ltd., Ponnampadam, an assessee under the K.G.S.T. Act. On account of default, proceedings were taken under that Act, which has led to the impugned revenue recovery proceedings referable to the demands under the Act. This writ petition is filed challenging those recovery proceedings on the ground that no action could be taken against the personal assets or person of the shareholders of the company.

2. In terms of Section 26 C of the K.G.S.T. Act, which came into force with effect from 1.4.1999, when the recovery cannot be taken successfully against the assets of a private limited company, those directors who were in office during the relevant period of incurring the liability, could be proceeded against. That is a provision which enables recovery of all liabilities that

accrue under the K.G.S.T. Act on and after 1.4.1999. That apart, if any person has executed a bond in connection with the acquisition of registration of the company, those bonds could also be utilised and recovery effected to the extent of the amount covered by those bonds, as against their executants. It is pointed out by the statement dated 25.8.2005 placed on record by the Sales Tax Officer, Vythiri, that petitioners 1 and 5 have executed bonds and that the directors are also liable in terms of the provisions of the Act. It is further pointed out, on the basis of the materials placed along with that statement, that the directors have never challenged the assessment orders which are notified and had essentially conceded to the demands.

3. Incidentally, it has also to be noticed, though an interim order was issued at the stage of admission on 21.10.2004 directing the petitioners to surrender all the properties of the company to the Village Officer, Vythiri, the KFC is on record, as of now, holding out a mortgage and stating that pursuant to the accrual of debt, the security property had been taken over by it.

4. Whatever be the priorities between the KFC and the State, in terms of the provisions of the Act and the mortgage that the KFC has in its favour, it is clear that the State can easily enforce the outstandings due under the Act against the directors and also against those who have executed bonds in connection with the registration of the company under the Act and also further proceed against the properties of the company, if necessary. This means that the public money involved in the transaction between the KFC and the debtor company could also be saved by deferring from distress action against the property of the company under the revenue recovery proceedings referable to the sale tax arrears, while the State can reach at the dues easily even before attempting auction of the property.

For the aforesaid reasons, this writ petition is disposed of in the following terms:

(i) The State and its officers, including the revenue officials, will be at liberty to proceed against those who have executed bonds in connection with registration of the company under the Act, to the extent of the amount covered by the bonds and thereafter to proceed against any director of the company, who may be liable under Section 26 C of the Act. The action against the directors can be had against their properties and person, if need be.

(ii) There shall be no action against any shareholder of the company, who had not been a director of the company at any relevant point of time.

(iii) The assets of the company which has been mortgaged to the KFC shall not be disturbed by the revenue recovery proceedings for sales tax arrears, unless the amounts due to the State as recoverables under the KGST Act are not available for recovery, in terms of what is stated in direction (i) above.

(iv) It is clarified that the directions herein does not, in any manner, impair the rights of the KFC.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.